

ITEL

May 6, 1992

Itel Rail Corporation550 California Street
San Francisco, CA 94104
(415) 984-4200Hon. Sidney L. Strickland, Jr., Esq.
Secretary
Interstate Commerce Commission
Washington, DC 20423Re: 1) Class II and III Railroad Per Diem Lease ("Lease")
2) Schedule No. 1

Dear Mr. Strickland:

On behalf of Itel Rail Corporation, the above instruments, in three (3) counterparts each, are hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$32 recordation fee.

Please record the Lease dated as of April 16, 1992, between Rex Railways, Inc. and Central Vermont Railway, Inc., under a new recordation number. Please record Schedule No. 1 under the new recordation number assigned to the Lease.

The parties to the aforementioned instrument are listed below:

Rex Railways, Inc. (Lessor)
550 California Street
San Francisco, California 94104

Central Vermont Railway, Inc. (Lessee)
2 Federal Street
St. Albans, Vermont 05478

The Lease sets forth terms and conditions by which railcars are leased. Schedule 1 adds to the Lease ninety-seven (97) 50 foot, 70 ton, Plate C, XM boxcars bearing reporting marks CV 600100-600199 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker
Patricia Schumacker
Legal Assistant

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MOTOR OPERATING UNIT

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LEASE NO. CENVTT01A

INTERSTATE COMMERCE COMMISSION

SCHEDULE NO. 1

This Schedule No. 1 to that certain Lease Agreement (the "Agreement") made as of April 16, 1992, ~~1991~~ between **REX RAILWAYS, INC.** ("Lessor") and **CENTRAL VERMONT RAILWAY, INC.** ("Lessee") is made as of April 16, 1992, ~~1991~~.

RECITALS:

- A. Lessor and Lessee are parties to the Lease Agreement dated as of March 26, 1979, as amended ("Assigned Lease"), between Lessor and Lessee, as assignee of Grand Trunk Western Railroad Company, pursuant to which 100 XM boxcars bearing the reporting marks and numbers CV 600100-600199 (the "Car(s)") were leased by Lessor to Lessee.
- B. The Cars marked CV 600110, 600123 and 600136 were destroyed on or about December 18, 1990.
- C. The term of the Assigned Lease expired on March 31, 1991 with respect to the Cars.
- D. The parties desire to enter into a new agreement with respect to the Cars.

Lessor and Lessee agree as follows:

- 1. **Cars Remain Subject to Assigned Lease:** Pursuant to Section 17 of the Assigned Lease, the Cars shall be deemed to have remained subject to the terms and conditions of the Assigned Lease through and including August 31, 1991.
- 2. **Supersedes and Replaces:** Retroactive to September 1, 1991, this Schedule No. 1 supersedes and replaces Schedule No. 1 to the Assigned Lease.
- 3. **Capitalized Terms:** All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 1 except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
- 4. **Cars Leased:** Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig	Description	Reporting Marks and Numbers	Dimensions			No. of Cars
			Length	Inside Width	Height	
XM	70-Ton, Plate C Boxcars with 10' Sliding Doors	CV 600100-600109, 600111-600122, 600124-600135, 600137-600199	50'6"	9'6"	11'1"	97

Each party, pursuant to due corporate authority, has caused this Agreement to be executed by its authorized officer, and each of the undersigned declares pursuant to 28 U.S.C. Section 1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

REX RAILWAYS, INC., Lessor

By: 

Title: President

Date: April 29, 1992

CENTRAL VERMONT RAILWAY, INC., Lessee

By: 

Title: General Manager

Date: April 16, 1992

18. **MISCELLANEOUS**

- A. **No Assignment or Sublease Without Lessor Consent:** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; PROVIDED, HOWEVER, THAT LESSEE MAY NOT WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR ASSIGN THIS AGREEMENT OR ANY OF ITS RIGHTS OR OBLIGATIONS HEREUNDER OR SUBLEASE OR ASSIGN ANY CARS TO ANY PARTY. Any purported assignment or sublease in violation hereof shall be void. This Section shall not prohibit Lessee from engaging in the practice commonly known in the railroad industry as assigning Cars to a shipper on Lessee's lines or the lines of Canadian National Railways.
- B. **Assignment by Lessor:** All rights and obligations of Lessor under this Agreement may be assigned, pledged or transferred in whole or in part without notice to or consent by Lessee.
- C. **Additional Documents:** Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition, financing or use of the Cars.
- D. **No Waiver:** No delay, waiver, indulgence or partial exercise by Lessor of any right, power, or remedy shall preclude any further exercise thereof or the exercise of any additional right, power or remedy.
- E. **Financial Information:** Upon request of Lessor, Lessee shall promptly furnish to Lessor an annual report or audited financial statements, or unaudited financial statements with the audited financial statements of its parent company, and any other financial information reasonably requested.
- F. **No Warranties:** Lessor's obligations with respect to the Cars are expressly limited to those set forth in this Agreement, and LESSOR MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. LESSOR MAKES NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, NOR SHALL LESSOR HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR IN CONNECTION WITH ANY CAR.
- G. **Notices:** Any notices required or permitted to be given hereunder shall be deemed given when sent by telecopy or telex or made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Lessor: Rex Railways, Inc.
Attention: Contract
Administration
550 California Street
San Francisco, CA 94104

Lessee: Central Vermont Railway, Inc.
Attention: President
2 Federal Street
St. Albans, VT 05478

or to such other addresses as Lessor and Lessee may from time to time designate.

- H. **Applicable Law:** The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of California without regard to California's choice of law doctrine.
- I. **Survival:** The obligations of Lessor and Lessee hereunder shall survive the expiration or other termination of this Agreement.
- J. **Entire Agreement:** This Agreement represents the entire agreement. This Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
- K. **Counterparts:** This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute one contract.
- L. **Days:** All references to days herein shall mean calendar days and not business days.

of this Agreement with respect to terminated Cars and any other amounts or damages due hereunder.

16. EXPIRATION OR OTHER TERMINATION

- A. **Return of Cars:** Upon the expiration or other termination of this Agreement with respect to any Car on any Schedule, Lessee shall return such Car to Lessor at the interchange point on Lessee's lines designated by Lessor (the "Return Location") or, if applicable, in accordance with Section 15.B.(iii). Lessee shall bear any transportation costs incurred in moving any Car to the Return Location. If the Return Location is on Lessee's tracks, Lessee shall use best efforts to load such Car with freight and deliver it to a connecting carrier for shipment.
- B. **Condition Upon Return - Lessee Responsible for Maintenance:** If Lessee is responsible for Maintenance of any Car on any Schedule, except for normal wear and tear, each such Car shall be returned to Lessor (i) in as good condition, order and repair as when delivered to Lessee; (ii) in interchange condition in accordance with AAR and FRA rules and regulations, interchange condition to include the replacement of missing materials and the correction of wrong repairs and items listed in the Interchange Rules as "cause for renewal" and "cause for attention"; (iii) free of any and all Rule 95 damage; (iv) suitable for loading of the commodities allowed in the applicable Schedule; and (v) free from all accumulations or deposits from commodities transported in or on it while in the service of Lessee.
- C. **Condition Upon Return - Lessor Responsible for Maintenance:** If Lessor is responsible for Maintenance of any Car on any Schedule, each such Car shall be returned to Lessor (i) free of Rule 95 damage and (ii) free from all accumulations or deposits from commodities transported in or on it while in the service of Lessee.
- D. **Storage:** Lessee shall, at Lessor's option, provide up to 120 days free storage on its lines for any Car which is either on Lessee's lines at expiration or other termination or is subsequently returned to Lessee's lines.
- E. **Holdover Rent:** Until any Car is returned to Lessor, Lessee shall continue to pay rent for such Car. If Lessor requests in writing the return of any Car and Lessee fails to use best efforts to return such Car, Lessee upon written notice from Lessor shall pay rent on a monthly basis in an amount equal to the amount which would be earned by such Car if it were off the Eligible Lines 100% of the time and earning Hourly Revenues and Mileage Revenues at the Revenue Rates and Lessee shall in addition make all other payments and keep all obligations required of Lessee under this Agreement as though such expiration or other termination had not occurred. Nothing in this Section shall give Lessee the right to retain possession of any Car after expiration or other termination of this Agreement with respect to such Car.
- F. **Remarking:** Lessee shall bear all reasonable costs associated with remarking each Car at a facility mutually selected by Lessor and Lessee. Remarking shall include: (i) removal of existing reporting marks and all company logos of Lessee; (ii) complete cleaning of the area where new marks are to be placed as designated by Lessor; (iii) application of new mandatory reporting marks; and (iv) any transportation involved in moving each Car to and from the remarking facility.
- G. **Return of Records:** If a party other than Lessor is Record Keeper, Lessee shall return to Lessor the current AAR UMLER format for hard copy records. Lessee shall continue to allow (at no burden or expense to Lessee) the Cars to be registered in UMLER until the Cars are remarked.

17. INDEMNITIES

Lessee agrees to defend, indemnify and hold harmless Lessor from any and all claims, losses, damages, liabilities, costs, and expenses (including attorneys' fees) with respect to, caused by, or arising out of the Cars which are occasioned by the fault of Lessee, occur while the Cars are in Lessee's possession, custody or control, or would be the Lessee's responsibility as the "handling carrier" under the Interchange Rules and Car Hire Rules if the Cars were not bearing Lessee's reporting marks. The indemnities contained in this Agreement shall survive the expiration or termination of this Agreement.

14. **POSSESSION AND USE**

- A. **Use:** This Agreement and Lessee's rights are subject and subordinate to the rights and remedies of any lender, owner or other party which finances the Cars.
- B. **Compliance:** Lessee agrees that while Cars are in Lessee's possession, custody or control the Cars shall be used in compliance with all applicable laws, regulations and AAR rules.
- C. **Marks to Show Ownership or Security Interests:** Lessor may mark Cars to indicate the rights of Lessor or of any financing party. Lessee may place any marking or lettering on any Car or remove or change any reporting mark or Lessor's lettering only upon the written consent of Lessor.
- D. **Lessee Liens:** Lessee shall not directly or indirectly allow to exist encumbrances of any kind on or with regard to any Cars or this Agreement arising by, through or under it except those created for the benefit of Lessor or any financing party. Lessee shall within 5 days notify Lessor in writing if any such encumbrance arises and shall immediately at its expense cause it to be discharged.

15. **DEFAULT**

- A. **Events of Default:** The occurrence of any of the following events shall be an Event of Default:
 - (i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within 10 days after the date such payment is due;
 - (ii) The breach by Lessee of any other term or condition of this Agreement which is not cured within 30 days after notice of such breach;
 - (iii) Lessee makes a general assignment for the benefit of creditors or it fails to pay, or states that it is unable to pay, or is unable to pay its debts generally as they become due.
 - (iv) In the event that Lessee becomes the debtor in a Chapter 11 proceeding under the Bankruptcy Code, the failure of Lessee to assume this Agreement within 90 days of the commencement of the Chapter 11 case.
 - (v) Any action, event or existence of any condition the effect of which would be to materially impair Lessee's ability to perform its obligations under this Agreement.
- B. **Lessor Remedies:** Upon the occurrence of any Event of Default, Lessor at its option may exercise any or all of the following rights and remedies and any additional rights and remedies permitted by law (none of which shall be exclusive) and shall be entitled to recover all its costs and expenses including attorney fees in enforcing its rights and remedies:
 - (i) Terminate this Agreement and recover damages; and/or
 - (ii) Proceed by any lawful means to enforce performance by Lessee of this Agreement and/or to recover damages for any breach thereof; and/or
 - (iii) By notice in writing to Lessee, terminate Lessee's right to possession and use of some or all of the Cars, whereupon all right and interest of Lessee in such Cars shall terminate; thereupon Lessee shall at its expense promptly return such Cars to Lessor at such place as Lessor shall designate and in the condition required as provided in the section of this Agreement captioned "Expiration or Other Termination"; or if Lessee does not so promptly return the Cars on demand Lessor may enter upon any premises where the Cars may be located and take possession of such Cars free from any right of Lessee. Lessee shall pay to Lessor all rental amounts which under the terms of this Agreement may then be due or would have become due for the duration

public liability insurance. Lessee may self-insure with respect to the Cars under its Canadian National Railways policy ("CN Policy") and such CN Policy shall be in such amounts and against risks customarily insured against by Lessee under its CN Policy on railcars owned by Lessee.

- B. If Lessee Does Not Self-Insure:** If Lessee does not self-insure, Lessee's insurance policies shall: (i) be in such amounts and for such risks and with such insurance companies as are satisfactory to Lessor, (ii) name Lessor and any financing party designated in writing by Lessor as additional insureds and as loss payees and provide that they shall receive 30 days prior written notice of any material changes in coverage or cancellation, and (iii) be primary to any other insurance carried by or for the additional insureds and Lessee shall cause its insurer specifically to waive subrogation, claim and recovery with respect to such other insurance. Any and all deductible amounts in Lessee's policies shall be paid by Lessee in the event of loss. Lessee shall furnish to Lessor certificates of insurance from Lessee's insurer or broker confirming the insurance described in this Section B, within 30 days of a written request from Lessor.

10. TAXES

If the Lessor is designated on the applicable Schedule as the "Property Taxpayer," Lessor shall reimburse Lessee for all federal, state and local property taxes assessed against or levied upon the Cars and paid by Lessee. If Lessee is the Property Taxpayer, it shall be solely responsible for such taxes. The Property Taxpayer may contest such taxes in appropriate proceedings and the other party will cooperate with the Property Taxpayer in such contest. Lessor shall not be liable for penalties or interest payable. Lessee shall forward to Lessor upon receipt copies of all correspondence, notifications of proposed assessments and tax bills with respect to such property taxes. Upon Lessor's reasonable request Lessee shall provide Lessor with a draft of Lessee's property tax return before it is filed. Lessee shall be liable for all other taxes or government impositions with respect to the Cars.

11. STORAGE

In the event that any Car is not in use while subject to this Agreement, Lessee shall be responsible for storing such Car at its expense in a secure location.

12. RENT

Lessee shall pay Lessor rent as set forth on each applicable Schedule.

13. CASUALTY CARS

- A. Casualty While Not in Lessee's Possession:** If any Car is destroyed or damaged beyond repair while not in the possession, custody or control of Lessee or Lessee's agent or shipper and such destruction or damage of a Car has been reported in accordance with the Interchange Rules, such Car will be removed from the rental calculations of this Agreement on the date car hire ceases as set forth in Rules 7 and 8 of the AAR's Code of Car Hire. Lessor shall be entitled to all casualty proceeds from the Car.
- B. Casualty While in Lessee's Possession:** If any Car, while in the possession, custody or control of Lessee or Lessee's agent or shipper, is destroyed or damaged to the extent that such damage exceeds the Depreciated Value ("DV") as provided in the Interchange Rules for such Car, Lessee shall promptly notify Lessor in writing of such damage or destruction and shall remit to Lessor in accordance with the Interchange Rules an amount equal to the DV of such Car within the earlier of (i) 30 days of receipt of an invoice from Lessor or (ii) 90 days of the damage or destruction date. Such Car shall remain subject to the terms of this Agreement, including the rental terms, until the date on which Lessor receives all amounts due to it hereunder.
- C. Substitution of Car:** Lessor may at its expense replace any such destroyed Car with similar equipment upon prior written notice to Lessee.

6. MAINTENANCE

- A. **Definition of Maintenance:** "Maintenance" means all repairs, maintenance, replacement of parts and mandated modifications as are needed to keep any Car in good working order and repair, suitable for loading and interchange and in accordance with the Interchange Rules, the Federal Railroad Administration ("FRA") rules and the rules of any other applicable regulatory body.
- B. **Definition of Interchange Rules:** "Interchange Rules" means collectively the Field Manual of the AAR Interchange Rules and the Office Manual of the AAR Interchange Rules.
- C. **Maintenance by Lessee:** If any Schedule provides for Maintenance of any Car by Lessee, Lessee shall at its expense cause such Maintenance to be performed in a timely manner. Lessor shall have title to any replacement parts or additions applied to any Car.
- D. **Maintenance by Lessor:** If any Schedule provides for Maintenance by Lessor of any Car, then:
- (i) **Lessor Responsibility and Exceptions:** Lessor shall at its expense perform in a timely manner such Maintenance. However, such Maintenance shall be at Lessee's expense if it was occasioned by (a) damage (which shall not include ordinary wear) while in Lessee's or Lessee's shipper's possession, custody or control, (b) damage occurring from use other than permitted under this Agreement, or (c) damage for which Lessee would have been responsible under the Interchange Rules had the Car been a foreign car (including damage not noted at time of interchange to Lessee). Lessee shall promptly notify Lessor of any Maintenance required, providing the time, place and nature of any accident or bad order condition.
 - (ii) **Running Repairs:** To facilitate continued immediate use of any Car, Lessee may make running repairs (utilizing Lessee's own employees, but not any private repair facility or any private contractor on Lessee's property) to those parts of any Car specified in the exhibit attached to the applicable Schedule, but Lessee shall not perform or cause to be performed any other Maintenance on any Car without Lessor's prior written consent. Lessee shall submit a monthly invoice in AAR format for running repairs performed on any Car by Lessee or by another railroad which has billed and received payment therefor from Lessee.
 - (iii) **Lessee's Reimbursement:** Lessee shall, within 30 days of notification that Lessor has paid a bill for maintenance or repair for which Lessee is responsible, reimburse Lessor for such payment.

7. RECORD KEEPING

Lessee shall register the Cars in the Official Railway Equipment Register and "UMLER" and shall insert reporting marks provided by Lessor in the ownership field. The party responsible for Maintenance with respect to any Car shall compile and maintain records pertaining to Maintenance and billing for such Car in accordance with the Interchange Rules and AAR format. Lessee shall compile and maintain records pertaining to running repairs on the Cars and shall furnish copies to Lessor upon request. If Lessee desires to change the Record Keeper, Lessee will not select a Record Keeper other than Lessor without Lessor's prior written consent.

8. INSPECTION

Lessee shall permit Lessor reasonable access during normal business hours to examine the Cars on Lessee's lines or Lessee's records relating to the Cars. Lessor shall provide Lessee with a 24 hour notice prior to inspecting Cars or records located on Lessee's property.

9. INSURANCE

- A. **Lessee's Insurance Obligation:** Lessee shall at its expense carry and maintain on the Cars while on Lessee's lines or under Lessee's custody or control (i) all risk, physical loss and damage insurance and (ii)